

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

JAMES MURPHY,	:	
	:	
Plaintiff,	:	05 Civ. 376 (LMM)
	:	
- against -	:	<u>MEMORANDUM AND ORDER</u>
	:	
METROPOLITAN TRANSPORTATION	:	
AUTHORITY,	:	
	:	
Defendant.	:	
	:	
-----x	:	

McKENNA, D.J.,

1.

In the wake of the Court's Memorandum and Order of April 14, 2009 (familiarity with which is assumed), plaintiff (in his counsel's letter to the Court of June 9, 2009) seeks to exclude the testimony of defendant's witness Ernest R. Frazier, Sr., on the ground that Mr. Frazier has not, in his amended Report, complied with the April 14, 2009 Memorandum and Order. The application to exclude the Frazier testimony for this reason is denied. The specific examples cited and quoted in plaintiff's counsel's letter of June 9, 2009 do not show non-compliance.

2.

Plaintiff raises some other issues.

Either side may, if it so chooses, depose any expert witness the other side will offer as such at trial. The deposing party will bear the transcription costs of the deposition; the

party offering the expert witness will pay any charges the witness may require. Any expert deposition is to be completed not later than October 9, 2009.

Mr. Frazier lists two cases in which he has testified as an expert. He is to update that list, if there are any subsequent instances of testimony, and to identify the courts for the two cases already identified and for any subsequent testimony, and the dates of the testimony; if Mr. Frazier or defendant's counsel has a copy of any such testimony, a copy is to be supplied to plaintiff's counsel.

Any document relied on by Mr. Frazier in his opinion for this case is to be made available for plaintiff's examination at defendant's counsel's office.


The Court sees no basis in the parties' submissions to sanction any party.

3.

Counsel are to exchange and submit (i) lists of witnesses that will be called at trial, (ii) lists of exhibits that will be offered at trial, and (iii) proposed charges, all not later than October 15, 2009. As the parties are aware, trial is to commence on October 20, 2009, at 10:00 A.M.

SO ORDERED.

Dated: September 21, 2009



Lawrence M. McKenna
U.S.D.J.